City of Lafayette Staff Report

For:	Lafayette City Council
By:	Jennifer Russell, Parks, Trails & Recreation Director
Date Written:	July 21, 2009
Meeting Date:	August 10, 2009
Subject:	Accepting a relocated city trail easement on a segment of the Burton Ridge Trail

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Introduction

The Burton Ridge Trail (aka Calaveras Ridge Trail) is identified on both the City's Trails Master Plan and the East Bay Regional Park District's Master Plan. Staff from the East Bay Regional Park District (EBRPD) examined a segment of the trail alignment that goes through the Eng's property and suggested working with the property owner on an alternative route that moves the trail further from the house site and provides a more level walking surface. After meeting on site to walk the suggested alternate route with representatives from the City and EBRPD, the Engs agreed to the new easement alignment.

Recommendation

Authorize the City Manager to execute the Quitclaim Deed regarding a section of the original trail easement alignment and accept a relocated trail easement alignment.

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

City Clerk: J. Robbins
CITY OF LAFAYETTE
3675 MT. DIABLO BLVD., SUITE 210
LAFAYETTE, CA 94549

THE SPACE ABOVE IS FOR RECORDERS USE ONLY

DOCUMENT TITLE

QUITCLAIM OF EASEMENT

Weylin G. Eng and Roselyn M. Eng, Trustees, Kats Family Trust

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, California 94549
Attention: Parks and Recreation Department

Subdivision _____, Book ____, Page __ *et seq.* EXEMPT FROM RECORDING FEES PER GOVT. CODE 27383

QUITCLAIM OF EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF LAFAYETTE, a municipal corporation ("Grantor")

hereby remises, releases and forever quitclaims to

WEYLIN G. ENG AND ROSELYN M. ENG, Trustees, Kats Family Trust ("Grantee")

all its easement rights for a public trail ("**Trail Easement Rights**") acquired under that certain Deed of Easement dated September 23, 1981, accepted by the City Council on March 25, 1985, and recorded on October 20, 1985, in Book 12673 of the Official Records, at pate 490, of Contra Costa County, California, ("**Grant of Easement**"), in that certain real property situated in the City of Lafayette, County of Contra Costa, State of California, more fully described and shown in EXHIBIT A (Legal Desription) and EXHIBIT B, (Plat Map) attached hereto and incorporated herein by reference ("**Quitclaimed Easement Area**").

[Signatures on following pages]

SIGNATURE PAGE
TO QUITCLAIM OF EASEMENTS

DATED:_____ CITY OF LAFAYETTE

By: _____
Steven Falk
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM

BEST BEST & KRIEGER LLP

By: _____
City Attorney

EXHIBIT A
TO QUITCLAIM OF EASEMENTS

Proposed Quit-Claim of Trail Easement
(Take from City – Give to Eng)

EXHIBIT 'A'

QUIT-CLAIM OF TRAIL EASEMENT

Real property situated in the City of Lafayette, County of Contra Costa, State of California, being described as follows:

A Portion of Parcel 'B', as said parcel 'B' is shown on the Parcel Map for Subdivision MS 501-80, recorded October 29, 1981, in Book 98 of Parcel Maps, at Page 8, Contra Costa County Records, being further described as follows:

A strip of land, twenty (20) feet wide, measured at right angles, the centerline of which is described as follows:

COMMENCING at the Northeast Corner of said Parcel 'B' (98 PM 8); thence leaving said Point of Commencement westerly along the north line of said Parcel 'B' (98 PM 8) the following courses and distances: South 69°40'10" West, 103.46 feet; thence North 88°19'30" West, 132.00 feet; thence South 74°43'48" West, 52.79 feet TO THE TRUE POINT OF BEGINNING, thence leaving said True Point of Beginning and said North Line along the aforesaid Centerline of Trail Easement South 38°51'04" West, 499.17 feet TO THE POINT OF TERMINUS, said Point of Terminus being a point on the centerline of the twenty-five foot wide Easement entitled "C.L. 25' Easement" as said easement is shown on said Subdivision MS 501-80 (98 PM 8).

The sidelines of said strip of land have been extended and/or shortened so as to terminate at their northern terminus at the North Line of said Parcel 'B' (98 PM 8) and at their southern terminus with the centerline of said "25' wide Easement" (98 PM 8).

See Exhibit 'B' (plat map) attached hereto and made a part hereof:

A.P.N. 238-090-030 (a portion of)

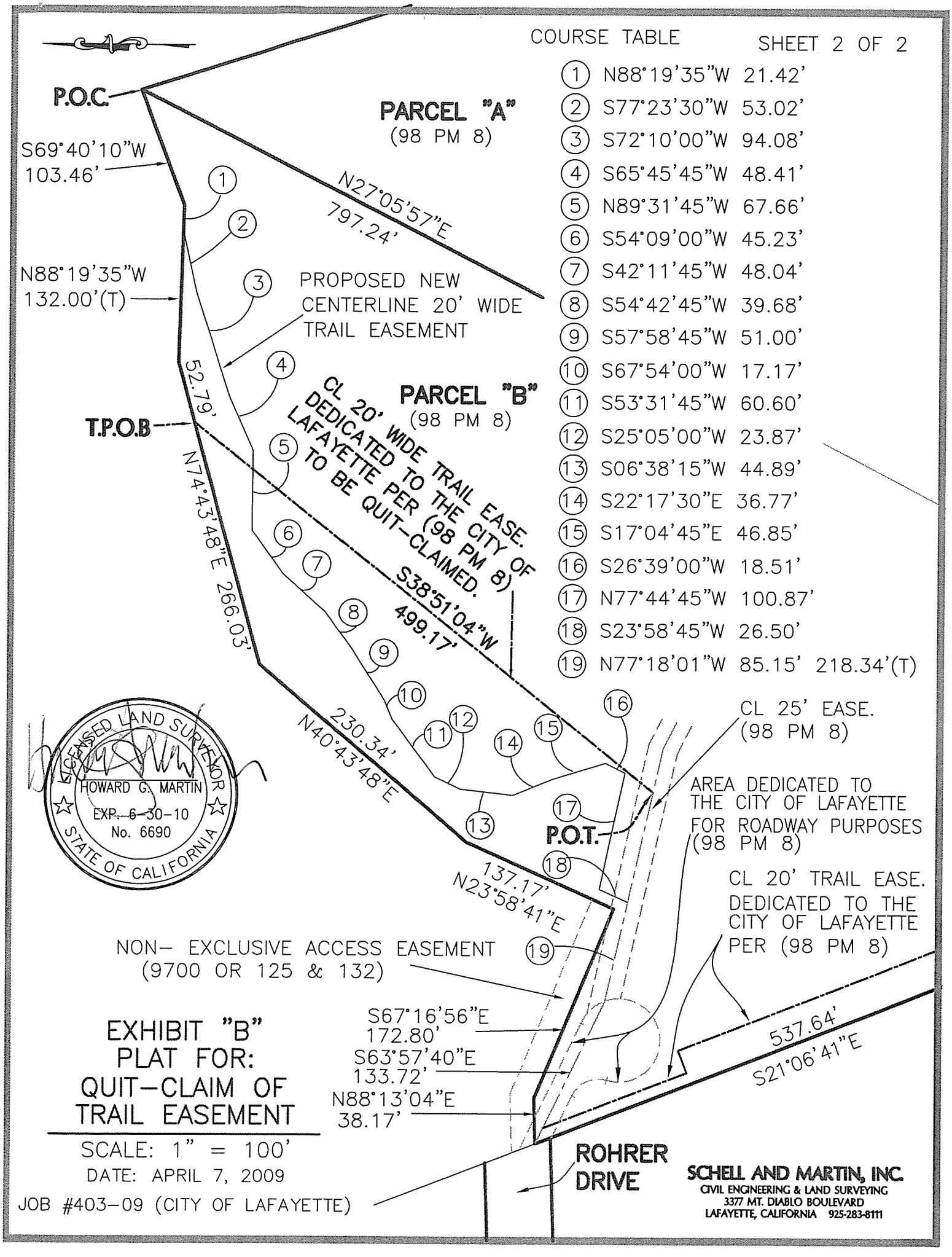
End of Description.

By: _____
Howard G. Martin, LS #6690

LICENSED LAND SURVEYOR
HOWARD G. MARTIN
Exp 6/30/10
No. 6690
STATE OF CALIFORNIA

Schell & Martin, Inc.
Civil Engineering & Land Surveying
Lafayette, California

EXHIBIT B
TO QUITCLAIM OF EASEMENTS



COURSE TABLE

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4	S65°45'45"W	48.41'
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18	S23°58'45"W	26.50'
19	N77°18'01"W	85.15' 218.34'(T)

EXHIBIT "B"
PLAT FOR:
QUIT-CLAIM OF TRAIL EASEMENT

SCALE: 1" = 100'

DATE: APRIL 7, 2009

JOB #403-09 (CITY OF LAFAYETTE)

SCHELL AND MARTIN, INC.
CIVIL ENGINEERING & LAND SURVEYING
3377 MT. DIABLO BOULEVARD
LAFAYETTE, CALIFORNIA 925-283-8111

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

City Clerk: J. Robbins
CITY OF LAFAYETTE
3675 MT. DIABLO BLVD., SUITE 210
LAFAYETTE, CA 94549

THE SPACE ABOVE IS FOR RECORDERS USE ONLY

DOCUMENT TITLE

GRANT OF TRAIL EASEMENT

Weylin G. Eng and Roselyn M. Eng, Trustees, Kats Family Trust

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, California 94549
Attention: Parks and Recreation Department

Subdivision ____, Book ____, Page __ *et seq.* EXEMPT FROM RECORDING FEES PER GOVT. CODE 27383

GRANT OF TRAIL EASEMENT

Weylin G. Eng and Roselyn M. Eng, Trustees, Kats Family Trust (together with its successors and assigns, "**Grantor**"), is the owner of that certain real property in the City of Lafayette, County of Contra Costa, State of California, as more particularly described in Exhibit "A-1" (Legal Description) attached hereto and made a part hereof ("**Grantor Property**"). The City of Lafayette, is a California municipal corporation (together with its successors and assigns, "**Grantee**").

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, by this Trail Easement (this "**Easement Agreement**"), Grantor does hereby GRANT to Grantee, for the benefit of Grantee, and the general public, a permanent irrevocable, non-exclusive easement in, to, over and across that portion of the Grantor Property consisting of an area of approximately twenty (20) feet in width as more particularly described and shown in EXHIBIT "A-1" (Legal Description) and EXHIBIT "B-2" (Plat Map) attached hereto and made a part hereof (the "**Easement Area**"), for the purpose of entering upon the Easement Area to conduct activities related to the installation, maintenance, repair and replacement of pedestrian trails (collectively, the "**Trails**") and the use thereof by the general public for recreational purposes (the "**Trail Easement**"), together with the right to grant all or a portion thereof to third parties subject to the requirements set forth below.

1. Force Majeure Events. Notwithstanding the attached description of the Easement Area, both Grantor and Grantee acknowledge that the Easement Area consists of dirt trails and vegetation that are subject to movement, degradation, erosion and destruction from various influences including, without limitation, earthquakes, floods, wind, rain or other acts of God or events beyond the control of Grantor or Grantee (collectively, and as applicable, "**Force Majeure Events**"). Accordingly, Grantor and Grantee agree that the Easement Area described herein is subject to movement and relocation as a result of any such Force Majeure Events. Upon the occurrence of any Force Majeure Event that results in the movement of the Easement Area or otherwise results in the total or partial destruction of the Trail Easement granted hereby, Grantor and Grantee agree to reasonably cooperate with each other in good faith in relocating the Easement Area or otherwise establishing a new Easement Area for the Trail Easement. In

furtherance of the foregoing, Grantor and Grantee agree to execute and record an amendment to this Easement Agreement identifying and establishing the revised Easement Area.

2. Prohibited Uses. Any activity on or use of the Easement Area inconsistent with the purposes of the Trail Easement is prohibited. Without limiting the generality of the foregoing, the following uses are expressly prohibited on/in the Easement Area:

a. The Easement Area is not to be used for access to the property while the property is being developed or improved unless such access is first approved by the City of Lafayette Planning Services Division. Any damage to the Easement Area or Trail Easement caused by such use is to be repaired and paid for by Grantor as specified and approved by the Planning Services Division Staff.

b. The Easement Area is not to be encroached upon by fences, vegetation, earth mounds, drainage ditches, sheds, animal houses or structures of any kind.

c. There shall be no dumping of rubbish, building materials, garden clippings, run-off water, etc. on the Easement Area.

d. Any vegetation on the Property shall be planted at sufficient distance from the Easement Area to ensure that present or future vegetation does not interfere with safe passage. If said vegetation does interfere with safe passage and Grantor does not remove the vegetation after being requested to do so by the City, the City shall have the right to remove the vegetation at Grantor's expense.

e. The Easement Area shall be marked by the Grantor with permanent survey markers as required by the City of Lafayette's Parks, Trails, & Recreation Department.

f. If the Trail Easement is over a private road or driveway or other area which the owner wishes to post with signs indicating "Private", then trail signs shall also be posted by the Parks, Trails & Recreation Department indicating the Trail Easement and showing appropriate identification and directions including the City of Lafayette logo.

g. Public passage over the Trail Easement shall not be restricted or obstructed in any manner when there is an installed Trail.

3. Notwithstanding the foregoing, in exercising its easement rights, Grantee covenants to Grantor, its successors and assigns that Grantee shall pay all costs associated with the installation of the Trails. Upon completion of the installation of the Trails, the City shall accept sole responsibility for all costs and expenses related to the maintenance, repair and replacement of the Trails with the exception of Grantor's responsibility to remove encroaching vegetation described in Section 2(b) Easement Agreement. Grantor is informed by Grantee and

understands that members of the general public will have access to the Trail Easement once it has been improved with the Trail and additional Trail Easements have been acquired on properties that are adjacent to the Easement Area to make the Trails usable. Until such time, Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area.

4. Successors and Assignment. The Trail Easement granted hereby shall run with the land and all of the rights and obligations of Grantor and Grantee under this Easement Agreement shall inure to the benefit of their respective successors, transferees and assigns. Grantee shall have the right to assign its rights and obligations under this Easement Agreement, provided that such assignment shall be in writing and shall specifically recite that assignee's agreement to all of the terms and conditions of this Easement Agreement.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement Agreement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose of this Easement Agreement, to restore the portion of the Easement Area so injured. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement Agreement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement Agreement or injury to any protected values, including damages for any loss thereof, and to require the restoration of the Easement Area to the condition that existed prior to any such injury. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the protected values of the Easement Area, Grantee may pursue its remedies under this paragraph without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement Agreement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement Agreement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement Agreement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement Agreement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

7. Grantee's Discretion. Enforcement of the terms of this Easement Agreement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement Agreement in the event of any breach of any term of this Easement Agreement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement Agreement or of any of Grantee's rights under this Easement Agreement. No delay or omission by Grantee in the exercise of any right or remedy on any breach by Grantor shall impair such right or remedy or be construed as a waiver.

8. Hold Harmless. Prior to the City's installation of the Trails, Grantor shall hold harmless, indemnify, and defend Grantee and its officers, officials, employees, agents, and contractors and the heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties.

9. General Provisions.

a. Controlling Law. The interpretation and performance of this Easement Agreement shall be governed by the laws of the State of California.

b. Severability. If any provision of this Easement Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement Agreement and supersedes all prior or contemporaneous discussions, negotiations, understandings, or agreements, whether written or oral, relating to the Easement Agreement, all of which are merged herein.

END OF EASEMENT
SIGNATURE PROVISIONS FOLLOW

SIGNATURE PAGE TO
GRANT OF TRAIL EASEMENT

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant of Trail Easement on 7/7, 2009.

"GRANTOR"

WEYLIN G. ENG, Trustee

Roselyn M. Eng

By: _____

Name: KATS Family Trust

Title: Trustee

"GRANTEE"

City of Lafayette, a municipal corporation

_____

_____, Mayor

ATTACH NOTARY ACKNOWLEDGMENTS

See attached California All-Purpose Acknowledgment

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

On July 7, 2009 (Date) before me, Patricia A. Rivera, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Weylin G. Eng and Roselyn M. Eng (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Patricia A. Rivera (Signature of Notary Public)

PATRICIA A. RIVERA
COMM. # 1793505
NOTARY PUBLIC - CALIFORNIA
CONTRA COSTA COUNTY
My Comm. Exp. Apr. 10, 2012

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Grant of Trail Easement

Document Date: 7/7/09 Number of Pages: 5

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
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☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A-1"
TO GRANT OF TRAIL EASEMENT

GRANTOR PROPERTY

Proposed Trail Easement
(Take from Eng – Give to City)

EXHIBIT 'A-1'

TRAIL EASEMENT

Real property situated in the City of Lafayette, County of Contra Costa, State of California, being described as follows:

A Portion of Parcel 'B', as said parcel 'B' is shown on the Parcel Map for Subdivision MS 501-80, recorded October 29, 1981, in Book 98 of Parcel Maps, at Page 8, Contra Costa County Records, being further described as follows:

A strip of land, twenty (20) feet wide, measured at right angles and concentrically, the centerline of which is described as follows:

COMMENCING at the Northeast Corner of said Parcel 'B' (98 PM 8); thence leaving said Point of Commencement westerly along the north line of said Parcel 'B' (98 PM 8) the following courses and distances: South 69°40'10" West, 103.46 feet; thence North 88°19'30" West, 21.42 feet TO THE TRUE POINT OF BEGINNING, thence leaving said True Point of Beginning and said North Line along the aforesaid Centerline of Trail Easement the following courses and distances: South 77°23'30" West, 53.02 feet; thence South 72°10'00" West, 94.08 feet; thence South 65°45'45" West, 48.41 feet; thence North 89°31'45" West, 67.66 feet; thence South 54° 09'00" West, 45.23 feet; thence South 42°11'45" West, 48.04 feet; thence South 54°42'45" West, 39.68 feet; thence South 57°58'45" West, 51.00 feet; thence South 67°54'00" West, 17.17 feet; thence South 53°31'45" West, 60.60 feet; thence South 25°05'00" West, 23.87 feet; thence South 6°38'15" West, 44.89 feet; thence South 22°17'30" East, 36.77 feet; thence South 17°04'45" East, 46.85 feet; thence South 26°39'00" West, 18.51 feet; thence North 77°44'45" West, 100.87 feet to a point on a line parallel with, and distant ten feet easterly, measured at right angles, from the west line of said Parcel 'B' (98 PM 8); thence southerly along said parallel line South 23°58'41" West, 26.50 feet TO THE POINT OF TERMINUS, said Point of Terminus being a point on the centerline of the twenty-five foot wide Easement entitled "C.L. 25' Easement" as said easement is shown on said Subdivision MS 501-80 (98 PM 8).

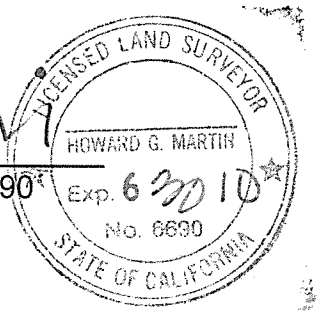
The sidelines of said strip of land shall be extended or shortened so as to terminate at their northern terminus at the North Line of said Parcel 'B' (98 PM 8) and at their southern terminus with the centerline of said "25' wide Easement" (98 PM 8).

See Exhibit 'B' (plat map) attached hereto and made a part hereof:

A.P.N. 238-090-030 (a portion of)

End of Description.

By: _____
Howard G. Martin, LS #6690



Schell & Martin, Inc.
Civil Engineering & Land Surveying
Lafayette, California

EXHIBIT "B-2"
TO GRANT OF TRAIL EASEMENT

EASEMENT AREA

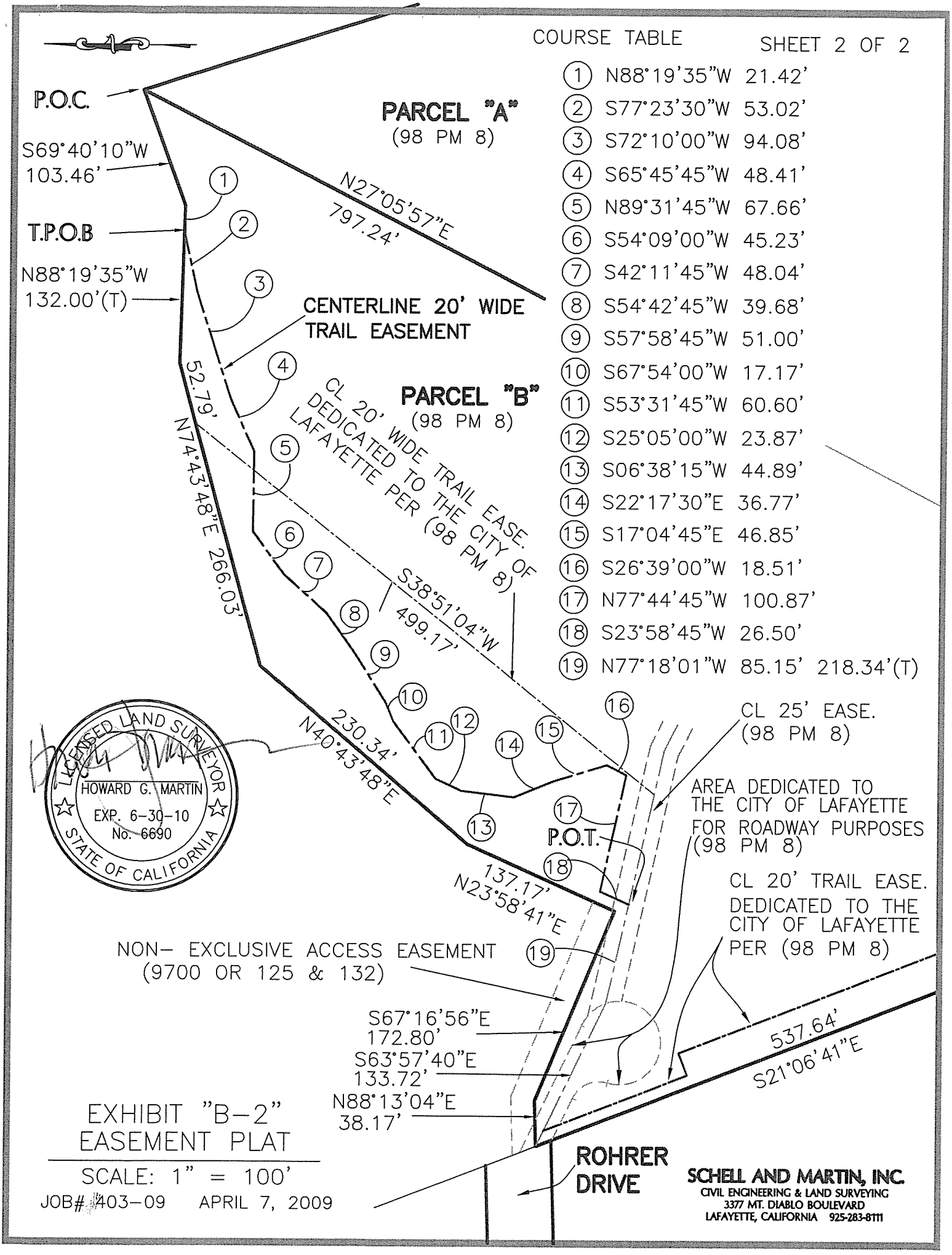


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EXHIBIT "B-2"
EASEMENT PLAT

SCALE: 1" = 100'

JOB# 403-09 APRIL 7, 2009

SCHELL AND MARTIN, INC.
CIVIL ENGINEERING & LAND SURVEYING
3377 MT. DIABLO BOULEVARD
LAFAYETTE, CALIFORNIA 925-283-8111

COUNTY OF CONTRA COSTA – GENERAL RECEIPT

DEPT: 4527 4/2/09 ,~~2000~~ RECEIPT G 1245595

Five Hundred Only DOLLARS $ 500-

FOR Rec. of Survey Deposit 0649-9665

RS3355

RECEIVED FROM

City of Lafayette
3675 Mt. Diablo Blvd #210
Lafayette, CA 94549

#39759

CASH	
CHECK	X
MONEY ORDER	

ACCT. BAL.	.
AMT. PAID	500.-
BAL. DUE	.

By: A. Ruyters

(D57, REV. 7/89)